IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 437 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders	Court's or Judge's Orders

Harshad Palwe i.by. Madhavi Tavanandi for the appellants.
P.D. Dalvi for respondent nos.1 to 3.

CORAM: S.B. DESHMUKH, J.
September 13, 2006.

P.C. :

1. Heard learned counsel for respondent nos.1 to 3 as well as appellant.

2. The original plaintiff no.2, in R.C.S.No. 138 of 1989, is appellant in this Second Appeal. The R.C.S.No.138 of 1989, was filed by two plaintiffs namely Hirabai Tatyasoabaso Gaikwad and the present plaintiff. Smt. Hirabai Gaikwad died during the pendency of the suit. Ultimately the original plaintiff no.2 is

the appellant in this Second Appeal.

3. The R.C.S.No. 138 of 1989 is dismissed by the trial court, mainly holding that the suit filed by the plaintiff is beyond the period of limitation. The trial court was of the opinion that Article 59 of the Limitation Act is applicable to the facts of the present case. On Appeal i.e. R.C.A.No.385 of 1998, the first appellate court confirmed the judgment and decree passed by the trial court. The first appellate court was also of the view that Article 59 is applicable to the facts of the case.

4. Undisputedly the sale deed executed by Tatyasoabaso Gaikwad i.e. father of present appellant/plaintiff is dated June 12, 1986. The suit is field on October 6, 1989. The learned counsel appearing for respondent / original defendant nos.1

to 3 has made available copy of the plaint from the paper-book provided to the parties by the learned District Judge concerned. I have read paragraph 7 onwards to the last paragraph of the plaint. If the plaint as a whole is read it is clear, that suit is essentially for possession and declaration of rights as claimed by the plaintiff. In my view, Ground No.1(a) which is reproduced herein below involves substantial question of law.

I(a) Whether Article 59 of the limitation Act is applicable to the said suit instituted by the appellant ?

5. Admit.

6. Call for Record and Proceedings.

7. Printing of paper-book is dispensed with.

8. The appellant is directed to file requisite number of copies of private paper-book consisting of pleadings of parties, notes of evidence and exhibited documents within a period of six months. Liberty to apply for early hearing.

sd/-

(JUDGE)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1138 OF 2002

IN

SECOND APPEAL NO. 437 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders	Court's or Judge's Orders

Harshad Palwe i/by. Madhavi Tavanandi for the appellants.
P.D. Dalvi for respondent nos.1 to 3.

CORAM: S.B. DESHMUKH, J.

September 13, 2006.

P.C. :

1. Heard the learned counsel for the parties.

2. The learned counsel, for the

applicant, submits, that the applicant does not press this application. She seeks leave to withdraw this application. After hearing the learned counsel for the Respondent, liberty to withdraw this application is granted and accordingly application stands dismissed and disposed off.

sd/-

(JUDGE)